

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEALS OF TERRY G.) APPEAL NOS. 07-A-2371 THRU
ALLRED from the decisions of the Elmore County) 07-A-2376
Board of Equalization for tax year 2007.)
) **AMENDED**¹ FINAL DECISION
) AND ORDER

RESIDENTIAL PROPERTY APPEALS

THESE MATTERS came on for hearing January 18, 2008, in Mountain Home, before Hearing Officer Steven L. Wallace. Board Members Lyle R. Cobbs, Linda S. Pike, and David E. Kinghorn participated in this decision. Appellant Terry G. Allred appeared. Prosecutor Kristina Schindele, Chief Appraiser Jody Soboslai, and Appraiser Rick Pataro appeared for Respondent Elmore County. These appeals are taken from decisions of the Elmore County Board of Equalization (BOE) denying the protests of the valuation for taxing purposes of properties described as Parcel Nos. RP001610010070A, RP001610020040A, RP001610020050A, RP001610010060A, RP001610010080A, and MHTR0000346100A.

The issues on appeal are the possible exemptions, and in the alternative, the market values of six (6) residential properties.

The decisions of the Elmore County Board of Equalization are affirmed.

FINDINGS OF FACT

Parcel No. RP001610010070A

Subject's land is valued at \$30,634, and the improvements' value is \$124,163, totaling \$154,797. At hearing, Appellant requested subject's total valuation be reduced to \$80,000.

Subject is a 4.78 acre residential lot located in an area referred to as Tipanuk, near

¹ This Amended Final Decision and Order corrects a typographical error on page -4- in the second paragraph.

Mountain Home. Attached is a 3,915 square foot two-story single family residence.

Parcel No. RP001610020040A

Subject's land value is \$27,911. At hearing, Appellant requested subject's value be reduced to \$10,000.

Subject is an 4.76 acre unimproved residential lot located in an area referred to as Tipanuk, near Mountain Home.

Parcel No. RP 001610020050A

Subject's land value is \$25,218. At hearing, Appellant requested subject's value be reduced to \$10,000.

Subject is an 4.32 acre unimproved residential lot located in an area referred to as Tipanuk, near Mountain Home.

Parcel No. RP001610010060A

Subject's land value is \$28,034. At hearing, Appellant requested subject's value be reduced to \$10,000.

Subject is an 4.78 acre unimproved residential lot located in an area referred to as Tipanuk, near Mountain Home.

Parcel No. RP001610010080A

Subject's land value is \$25,280. At hearing, Appellant requested subject's value be reduced to \$10,000.

Subject is an 4.33 acre unimproved residential lot located in an area referred to as Tipanuk, near Mountain Home.

Parcel No. MHTR0000346100

Subject's improvement value is \$7,711. At hearing, Appellant requested subject's value be reduced to \$1,000.

Subject is a 576 square foot manufactured home located in an area referred to as Tipanuk, near Mountain Home.

Appellant presented the same arguments for each above-referenced parcel. In the interest of judicial economy, we will treat all six (6) appeals as a single protest for the purposes of this decision.

Appellant's arguments are threefold;

1. Subjects' values are erroneous because the properties should be considered and treated as tax exempt properties under Idaho Code § 63-602P, the pollution control exemption.

2. Subjects' values are erroneous because the properties should be considered and treated as tax exempt properties under Idaho Code § 63-602AA, the exceptional situations exemption.

3. Subjects' values are not reflective of true market value because subjects have been severely damaged by dust caused by heavy truck traffic from several nearby gravel pits.

Appellant focused most closely on the third argument and presented much testimony in support of that position. Appellant began by noting in 1996 a conditional use permit was granted to allow the owner of a nearby parcel to operate a gravel pit. Soon after operation commenced, Appellant noticed a large amount of truck traffic to and from the gravel pit. As the roads were not paved, noticeable amounts of dust were put into the air. In the following several years, two additional gravel pit operations were underway. Truck traffic further increased and more dust was put into the air.

The dust caused varying degrees of damage to the subject properties. In particular, the residential improvements were greatly damaged. Appellant provided photographs and offered oral testimony to illustrate damage caused to the residence, the nearby pump house, and the shop structure. Appellant mentioned several years ago an attempt was made to modify the structures to better withstand the dust. Because the dust in the air was so thick, Appellant testified the owner of the construction crew would not allow his employees to make the needed modifications. No major preventative measures have been taken to date, however, Appellant noted the housings around the pump and electrical boxes had been replaced several times over the past fifteen (15) years.

Respondent grouped the subject properties into three categories and dealt with each one separately. First, regarding the parcel with Appellant's residence attached (Parcel No. RP001610010070A), Respondent noted the original assessment increased approximately 8% over the 2006 value. After physically inspecting the subject properties, Respondent reduced the total assessed value \$21,756, to \$154,797. Respondent noted the adjusted assessment was approximately 5% below subject's 2006 assessment of \$162,687.

Respondent then presented three improved sales of properties located in subject's immediate area. After making adjustments to account for various physical differences compared to subject, the adjusted sale prices of the properties was between \$183,543 and \$195,772. Subject was assessed at \$154,797.

Respondent next addressed Appellant's four (4) unimproved residential lots (Parcel Nos. RP001610020040A, RP001610020050A, RP001610020060A, and RP001610010080A).

Respondent mentioned the Tipanuk area where subjects are located is recognized as a slightly "depressed" (undesirable) area. As such, properties located in that particular area received the

lowest improved acre values in the county. Respondent noted that while improved acre value in the area remained static over the prior year, increases were seen in the remaining acre values as supported by available market data.

Respondent then presented six (6) bare lot sales to support subjects' values. The lots varied in size between 4.43 and 5.0 acres and sold between \$18,260 and \$32,000. Subjects ranged in size between 4.32 and 4.78 acres and were valued between \$25,218 and \$28,034.

Finally, Respondent spoke to Appellant's remaining property described as tax parcel number MHTR0000346100. Respondent stated the assessment increase of \$4,454 was deceiving. Respondent explained the value of the manufactured home actually decreased by \$919. The value of the attached garage (\$5,373) was removed from the land value and added to the improvements' valuation.

Respondent then pointed to three (3) sales of manufactured homes located in subject's area. The structures were similar in size to subject, however, minor adjustments were made to account for other physical differences compared to subject. The adjusted sales prices were between \$10,107 and \$11,311. Subject was assessed at \$7,711.

CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of fair market value or exemption status. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

We will first address Appellant's claim for property tax exemption under Idaho Code § 63-602P - Facilities for water or air pollution control, which in pertinent part reads:

The following property is exempt from taxation: facilities, installations, machinery or equipment, attached or unattached to real property, and designed, installed and utilized in the elimination,

control or prevention of water or air pollution, or, in event such facilities, installations, equipment or machinery shall also serve other beneficial purposes and uses, such portion of the assessed valuation thereof as may reasonably be calculated to be necessary for and devoted to elimination, control or prevention of water or air pollution. The state tax commission or county assessor shall determine such exempt portion, and shall not include as exempt any portion of any facilities which have value as the specific source of marketable byproducts.

This exemption applies to structures or devices designed and used for controlling or eliminating pollution. Appellant claimed subjects have been damaged by pollution, not that any pollution control or elimination devices or structures are present and being used on any portion of the properties. As such, Appellant has failed to meet the requirements of exemption under Idaho Code § 63-602P.

Subjects similarly do not qualify for property tax exemption under Idaho Code § 63-602AA

- Exceptional situations, which in pertinent part reads:

(1) The following property is exempt or partially exempt from taxation: real and personal property belonging to persons who, because of unusual circumstances which affect their ability to pay the property tax, should be relieved from paying all or part of said tax in order to avoid undue hardship, which undue hardship must be determined by the board of equalization.

. . .

(3) Claimants seeking exemption under this section must apply each year to the board of equalization and such claim must be submitted by June 20 of the current year. . . .

Without considering whether subjects would properly qualify under subsection 1, Appellant has failed to meet the requirements of subsection 3. Specifically, no application was

filed with the Elmore County Board of Equalization by the statutory deadline of June 20, 2007.

Next, we will address the parties' market value arguments. For the purposes of taxation, Idaho uses a market value approach to value property, as defined in Idaho Code § 63-201 (10):

“Market value” means the amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing sell, under no compulsion to sell, and an informed, capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment.

Appellant presented evidence demonstrating damage to subjects as the result of heavy amounts of dust caused by the heavy truck traffic associated with the several nearby gravel pit operations. Appellant referenced past litigation between the owners of the gravel operations and local residents. Also noted was the difficulty faced by Appellant in attempting to hire a work crew to modify subjects’ various structures to better withstand the wear and tear caused by the dust.

Respondent did not dispute Appellant’s claims of damage caused by the dust. In fact, Respondent inspected the subject properties and determined a \$21,756 downward adjustment to the residence was warranted. Respondent noted the adjustment lowered subject’s assessment below the 2006 value.

The Idaho Supreme Court has recognized three (3) methods for determining market value.

[T]here are three primary methods of determining market value: the cost approach, in which the value as determined by new cost or market comparison is estimated and reduced by accrued depreciation; the income approach, applicable to "income producing property" in which a capitalization rate is determined from market conditions and applied to net income from the property to determine appraised value; and the market data (comparison method) approach, in which value of the assessed property is ascertained by looking to current open market sales of similar property. *Merris v. Ada County*, 100 Idaho 59, 63, 593 P.2d 394, 398 (1979).

Respondent utilized the market data approach and presented numerous sales to support the values of the subject properties. We are not going to address each sale individually, but do find the sales involved properties similar in size, type, and location as subjects. Appellant did not challenge the comparability of the sale properties or otherwise attempt to distinguish subjects.

Appellant did not provide sales or other market data to support subjects' proposed values. Appellant instead argued the damage caused by the dust justified the requested value reductions. The Board accepts Appellant's contention that subjects were damaged by the dust, however, proof of diminished market value is needed to accept Appellant's value positions. As noted above, Respondent reduced subject's improvement value by \$21,756. Absent proof that further reductions are needed, the adjustment appears reasonable.

Respondent further supported subjects' values by presenting numerous sales of like property. Adjustments were made to account for various differences in the properties compared to subject. Nothing in the record indicates the adjustments were in error or otherwise unreasonable. It should be noted subjects were assessed below any of the sales prices presented.

After considering everything offered into evidence in these matters, the Board is convinced subjects assessments are fair and reasonable. Accordingly, the decisions of the Elmore County Board of Equalization are affirmed.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED the decisions of the Elmore County Board of Equalization concerning the subject parcels be, and the same hereby are, affirmed.

MAILED MARCH 20, 2008